

EXHIBIT 51

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Kelly Wilson,

Plaintiff,

v.

The Walt Disney Company, Disney
Enterprises, Inc., Walt Disney Pictures, and
Walt Disney Motion Pictures Group, Inc.,

Defendants.

Case No. 3:14-cv-01441-VC

Rebuttal Report of James McDonald

February 17, 2015

SUMMARY OF OPINIONS

I have read and reviewed Dr. Furniss's expert report dated February 8, 2015. I disagree with Dr. Furniss's opinions regarding the similarities between *The Snowman* and the *Frozen* teaser trailer. Dr. Furniss fails to discuss—much less apply—the standards that I understand apply in copyright cases to “filter” out elements that are not protected by copyright, including scenes-a-faire, merger, and other doctrines. As a result, Dr. Furniss's opinions about similarities between the two works in terms of character, plot, pace, mood, setting, dialogue, sequence of events, and other elements are based on highly abstract generalities. Had Dr. Furniss applied these doctrines to *The Snowman*, she could not have reached the conclusion that the two works are substantially similar, or that the *Frozen* teaser trailer could not have been created independently.

SUPPLEMENTAL MATERIAL REVIEWED

In preparing this report, I have reviewed the following materials, in addition to those cited in my original expert report:

- Dr. Maureen Furniss, “Analysis and Comparison of Kelly Wilson’s *The Snowman* and Disney’s *Frozen* Teaser Trailer,” February 8, 2015.
- *The Snowman in July* (originally *Der Schneemann*),
<https://www.youtube.com/watch?v=TxPOR8KBOo>.
- *Little Snowflake / Super Simple Songs*,
<https://www.youtube.com/watch?v=tbbKjDjMDok>.
- TheSnowman_PressKit_Statements.pdf, produced by the plaintiff in the *Wilson v. The Walt Disney Company et al.* litigation.
- The Snowman_LogLine_Synopsis.pdf, produced by the plaintiff in the *Wilson v. The Walt Disney Company et al.* litigation.
- Palo Alto International Film Festival 2011 Program, produced by the plaintiff in the *Wilson v. The Walt Disney Company et al.* litigation.

ANALYSIS

1. Methodological Flaws in Dr. Furniss's Expert Report

Two fundamental errors pervade Dr. Furniss's report:

First, Dr. Furniss does not address or apply the “extrinsic” test that I understand governs whether two works are “substantially similar.” As a result, Dr. Furniss makes no effort to engage in any filtration analysis: she does not attempt to distinguish protectable expression from unprotectable expression or general ideas from concrete expression. Dr. Furniss repeatedly points to “similarities” between elements that are self-evidently generic and abstract. For example, she incorporates into her analysis of substantial similarity the abstract and

unprotectable ideas that both snowmen have “a carrot nose”; that the antagonist characters in both works are “animals”; and that both works use the generic and unprotected filmmaking techniques of continuity editing and cross-cutting. Furniss Report at pages 23, 28. Based on my understanding of the standards that apply, these and other elements that Dr. Furniss credits are irrelevant to the substantial similarity analysis. Likewise, while Dr. Furniss is correct that both works “can be viewed in a three-act structure,” she does not factor into her analysis, or filter out of that analysis, the fact that the three-act structure she describes—inciting incident (Act I), conflict/complication (Act II), and climax-resolution (Act III)—is a generic framework for narrative storytelling. Furniss Report at page 24.

Dr. Furniss’s failure to distinguish protectable from unprotectable expression renders her report fundamentally unreliable in a case involving substantial similarity. Her conclusions rest on the unsupportable assumption that every element she describes as similar constitutes protectable expression.

Second, Dr. Furniss selectively juxtaposes individual frames from the two works in a manner that is highly misleading and fundamentally flawed. Dr. Furniss’s technique removes those frames from their context, and obscures rather than illuminates what is protectable or unprotectable about any particular scene. For instance, Dr. Furniss compares these shots when she contends that “each snowman shows his concern” about his carrot nose:



Furniss Report at page 26. In terms of protectable expression, these images are substantially different: the frame on the left is a full shot of the snowman who has fallen down a snowbank, while the shot on the right is a medium shot of a snowman with dramatically different features who is standing near a tree. Dr. Furniss compares the images solely because in both shots the snowmen are showing “concern”—but facial expressions are generic, unprotectable elements. *See also* Furniss Report at page 18 (showing the snowmen with determined expressions in two stills); page 21 (showing the snowmen with “worried” expressions in two stills).

To show how misleading this type of analysis can be, we can look at *Der Schneemann*, which Dr. Furniss argues is not substantially similar to *The Snowman*.



Here, both snowmen are shot from the side as they lie nose-less in a wintry landscape, confronted by a rabbit who has his nose. The similarities in the shots, taken out of context and ignoring differences between them, tell us nothing about whether the works are substantially similar. But that is exactly the type of analysis that Dr. Furniss applies in her report.

2. Analytic Flaws in Dr. Furniss’s Expert Report

Structure of the Works (Furniss Report at page 29)

In my initial expert report I concluded that the works under analysis have two fundamentally different purposes, because *The Snowman* is a short story that tells a fully fleshed-out dramatic arc, while the *Frozen* teaser trailer is a Looney Tunes-like action sequence that literally “teases” interest in the motion picture *Frozen*.

Dr. Furniss takes the confusing position that both works have “essentially the same . . . overall concept and feel.” She describes both works as “physical comed[ies]” with a “gag structure,” though she does not elaborate on her claim. Furniss Report at page 29. In my opinion, Dr. Furniss seriously mischaracterizes both works.

In “physical comedies,” gags are most often visual—hence the term “sight gag.” A gag involves an unexpected occurrence (a surprise turn, like a pie in the face) and/or an improbable-to-impossible physical action, which often involve pratfalls and slapstick (as in the work of the great silent film comics like Charlie Chaplin, Buster Keaton, and Harold Lloyd).

Dr. Furniss states that *The Snowman* is “constructed with a series of gags that build to a central action, which is a confrontation between a snowman and an animal antagonist on ice in an effort to get a carrot nose.” Furniss Report at page 16. In fact, *The Snowman* has only three “gags,” just one of which occurs before the carrot hits the ice. The gags are: (1) the unexpected inability of the Snowman to reach his fallen nose because of his short arms, (2) the Snowman’s feet slipping when he tries to walk on the ice, and (3) the impossibility of the rabbits cutting down the tree in one shot and appearing with neatly cut logs in the next shot. All three gags are somewhat understated; they are gentle comedic beats that emphasize the Snowman’s dilemma and the methodical determination of the rabbits. Neither these understated gags nor anything else in the work put the plaintiff’s film in the category of “comedy”—and certainly not the category of “physical comedy.”

The *Frozen* teaser trailer, on the other hand, consists of unmistakable physical comedy, with unexpected, impossible pratfalls and slapstick sight gags from the opening scene (Olaf

sneezing off his nose) to the end (Olaf sneezing off his head). All of Olaf and Sven's antics and actions—with Olaf's body constantly falling apart and causing him to rearrange it, and Sven's legs splaying at impossible angles and tongue stretching to unbelievable lengths—are over-the-top, cartoonish impossibilities in the vein of Chuck Jones' Looney Tunes (see especially the Wile E. Coyote & The Road Runner and Bugs Bunny cartoons).

The one “gag” common to both *The Snowman* and the *Frozen* teaser trailer—the snowmen’s feet slipping when they try to walk on the ice—is a stock element of characters moving on ice. *Bambi* includes an iconic scene of animals slipping awkwardly on ice. A video for children called “Little Snowflake” features a snowman slipping in a nearly identical way.



See <https://www.youtube.com/watch?v=tbbKjDjMDok>. The fact that it is a common gag is unsurprising, because the slipperiness of ice is a story-logic constraint if a plot involves a frozen pond and characters trying to traverse it (unless the characters are wearing ice skates). If a snowman protagonist or an animal antagonist magically had traction on ice, there would be no competition and thus no plot based on the unprotected idea of a race for an object.

The story element that bears out this basic structural difference most clearly is *theme*. I noted in my original report that *The Snowman* has well developed dramatic themes (“if you want something bad enough, you have to overcome your fears and fight for it”; “saving a life may be worth sacrificing a part of oneself”; and “there are more important things in life than winning/getting the prize”), while the teaser trailer, as a gag-based physical comedy, has no themes. Dr. Furniss’s report does not address these thematic differences.

Dr. Furniss’s misunderstanding of the “overall concept and feel” of the works is also reflected in her discussion of the plot. Her description of the plots completely omits the major episode in *The Snowman* in which the ice cracks and the rabbit falls in the water, forcing the Snowman to decide whether to use (and possibly sacrifice) his nose to save the rabbit. This sequence is the core dramatic moment in *The Snowman*, but Dr. Furniss simply ignores it. Furniss Report at page 20.

Finally, Dr. Furniss’s conclusion that both films are physical comedies with a gag structure seems to be at odds with statements the plaintiff has made about her own work. For instance, in a press kit she prepared for film festivals, the plaintiff explained she wanted to make a “lighthearted film” with “simple storytelling and classic values with quirky characters” that would “challenge audiences to examine their views on kindness and the difference between right and wrong.” In a log-line synopsis she also prepared for festivals, she explained that the

Snowman “finds the courage to battle and outwit the rabbits,” and then faces “a life and death situation and decides what is more important in life.” These statements are consistent with what is obvious from watching *The Snowman*: that it is a drama with a handful of light comedic elements. The fact that the plaintiff herself—and frankly almost any reasonable observer—would not describe *The Snowman* as a “physical comedy” based on gags confirms that Dr. Furniss is not fairly analyzing the work.

Plot (Furniss Report at pages 6–7, 16–22)

Dr. Furniss accurately describes the abstract plot idea of both works: “a confrontation between a snowman and an animal antagonist on ice in an effort to get a carrot nose.” Furniss Report at page 16. But an abstract plot is all that is: it does not describe the actual expression of the idea. Dr. Furniss’s subsequent description of the plots of the two works does not distinguish between aspects of the plot that flow naturally from this highly abstract basic premise and aspects of the plot that are particular to each work’s expression of that idea. As with her description of The Snowman as a “physical comedy,” Dr. Furniss’s analysis in a number of places mischaracterizes the plot of each work.

- Bullet 1, page 16: Dr. Furniss writes that both snowmen “appear in a snowy clearing in the woods.” A setting of a “snowy clearing” flows naturally from the premise of a story involving snowmen and set in winter. The settings themselves are different: in the teaser trailer, the landscape is flat and there is a flower, perhaps indicating spring is coming. In *The Snowman*, the landscape is hilly. The opening shots are also different. Dr. Furniss is wrong that both snowmen simply “appear”: Olaf walks into the frame from the left in the establishing shot, while the Snowman already is in place when the film opens. These differences serve important functions in establishing the characters’ unique personalities: Olaf’s walk and expression establish he is happy-go-lucky, while the Snowman’s expression and defensive gestures indicate he is defensive and scared of the bird.
- Bullet 2, page 17: Dr. Furniss writes that each snowman has “a physical problem that causes him to lose his carrot nose,” which, in the Snowman’s case, is said to be “relatively short arms and difficulty bending over.” This is wrong: the reason the Snowman loses his nose is that a bird lands on it and knocks it off. The Snowman’s short arms and difficulty bending over explain why he cannot quickly get it back, but not why he loses it. This is quite unlike Olaf, whose allergic reaction directly causes him to lose his nose.
- Bullet 3, page 17: Dr. Furniss writes that “the snowman’s nose comes to rest in the middle of a frozen pond” in both works. That is correct, but simply describes the basic plot idea. Dr. Furniss skips over the specific events in *The Snowman* that cause the nose to end up in the middle of the pond: the Snowman pushing the nose along the ground, trying to get it back; the Snowman tripping on a boulder, causing the nose to slide down the hill; and the rabbits sliding all the way across the pond in pursuit as the nose stops in the middle. In the *Frozen* teaser trailer, the basic premise is expressed very differently: Olaf sneezes and the nose lands in the middle of the pond, catching Sven’s attention on the opposite shore.

- Bullet 4, page 18: Dr. Furniss describes the ensuing conflict points in only general, superficial terms: “the carrot’s position is halfway between the snowman and the animal antagonist,” and the animal antagonist “eyes the carrot.” Dr. Furniss concedes that the antagonist in *The Snowman* is a group of rabbits while the antagonist in the teaser trailer is a reindeer. She omits other specific details, such as the fact that the rabbits chase the carrot and slide to the other edge of the pond while in the teaser trailer Sven is already there. Dr. Furniss also omits from her analysis the fact that an object midway between two characters is a stock element in cinema that sets up a competition for the object.
- Bullet 5, page 18: Dr. Furniss writes that “the snowman and the animal antagonist try their hardest to get to the carrot before the other.” Again, this is a highly abstract and generic description of the plot action. Dr. Furniss then says that in both works “the snowman uses sticks” as part of his effort to get the carrot. In fact, however, Olaf uses his *arm* to push himself along the ice; his detachable body parts are key to the trailer’s sight gags. The Snowman uses nearby tree branches as skis to ski down a nearby hill. Once again, the two works do not have similarity of expression in the plot element of finding a means to traverse an obstacle.
- Bullet 6, page 19: Dr. Furniss writes that the two works feature “a musical score and crosscutting” as the characters approach the carrot. A film’s score and editing techniques are not typically considered part of its “plot.” Moreover, almost all film action sequences involving two parties competing for prizes or racing toward a goal use music and standard cross-cutting between the rivals to build tension and suspense. One need only consider a classic scene such as the final showdown in *The Good, The Bad and The Ugly*, with rapid crosscutting set against the backdrop of Ennio Morricone’s classic score, to realize that Dr. Furniss is describing Filmmaking 101.
- Bullet 7, page 20: Dr. Furniss states that the rivals “arrive at the carrot at the same time.” This is wrong: the Snowman reaches the carrot first, before the rabbit, while Sven and Olaf truly do reach it at the same time. (Sven actually manages to nibble it a split-second before Olaf, but Olaf grabs hold of it before Sven can get it into his mouth.)

Sven is the first to the carrot.*The Snowman is the first to the carrot.*

The frames Dr. Furniss chooses to illustrate this bullet point are a good example of why juxtaposed individual frames can be misleading: the images Dr. Furniss chose make it *appear* that in both films the antagonists reach the carrot at the same time, when in fact

the Snowman “winning” the race for the carrot is a *crucial* plot detail in the plaintiff’s film that sets up the dramatic final act.

- Bullet 8, page 20: Dr. Furniss states that “the snowman briefly regains control of the carrot.” Again, this is wrong: the Snowman actually gets his nose back, grabbing it from the rabbit before he can bite it. Olaf, on the other hand, never regains control of his nose; he and Sven struggle for it and it flies up and out of the frame:

Neither Sven nor Olaf has the carrot an instant before it takes flight



- Bullet 9, page 20: Dr. Furniss writes, “through the action of the snowman, the animal ends up with the carrot.” This statement has two problems. First, it is wrong with respect to the teaser trailer: Sven gets the carrot because he is able to get to his feet and chase after it, not because of any action of Olaf’s.

Sven on his way to get the carrot



Second, Dr. Furniss’s vague and abstract statement about the “action of the snowman” completely ignores *The Snowman*’s climactic, dramatic final act in which the ice cracks, the rabbit falls into the water, the Snowman has to decide whether to potentially sacrifice his nose to save the rabbit’s life, and the Snowman’s ultimate decision to do so, causing him to lose his grip on the nose as he pulls the rabbit to safety. This episode makes up a

quarter of *The Snowman*'s running time and sets the thematic tone for the whole film. It is simply omitted from Dr. Furniss's plot analysis.

- Bullet 10, page 21: Dr. Furniss writes that "the snowman realizes that his carrot is likely to be eaten." Again, Dr. Furniss's only example of what makes this an aspect of the unique expression of the plot is that both snowmen have a "worried expression" after the antagonist ends up with the carrot. But sadness and worry flow naturally from losing something important; virtually any movie involving conflict depicts the negative reaction of the character who has lost an object.
- Bullet 11, page 21: Dr. Furniss writes, "in a surprise move, the animal antagonist returns the nose to the snowman." Again, Dr. Furniss's generic, highly abstract description of the plot omits important detail. In the teaser trailer, Sven's decision really is a surprise, characterized by the visual gag of him popping the nose back of Olaf's head. The viewer is surprised and happy to learn that it turns out Sven wanted to play fetch, not eat the carrot. The rabbit's decision is very different because the Snowman just saved his life. The rabbit thus faces the reverse of the decision the Snowman faced when he had to decide whether to save the rabbit's life in the first place. The film creates *suspense* about whether the rabbit will do the right thing, but it is not a *surprise* when he hands the nose over.
- Bullet 12, page 22: Dr. Furniss's statement that both snowmen are "happy" to get their noses back simply states the obvious. The two snowmen don't "hold" their noses with their hands. The Snowman uses his hands to place his nose onto his head. In the teaser trailer, Sven shoves the nose back into Olaf's face. Olaf does re-position the nose, which follows naturally from the manner of its re-attachment, but again the actions are different as are the actions that set up the snowmen touching their noses.
- Bullet 13, page 22: Dr. Furniss's statement that "the snowman appears to gain a deeper understanding of the animal antagonist's personality" is not apparent from viewing *The Snowman*, and instead seems to be speculation on Dr. Furniss's part. She does not actually describe the conclusions of the two plots, which are in fact very different. In the teaser trailer, the two characters remain together as Olaf happily pats Sven, causing an allergic reaction that sets up the final sight gag of Olaf's head blowing off. In *The Snowman*, the Snowman quietly watches the rabbits hop away.

Characters (Furniss Report at page 23)

The Court has already held that the two snowman characters are not substantially similar. Nonetheless, Dr. Furniss's discussion of the characters illustrates the same problem that plagues the rest of her report: there is no effort to distinguish between generic and non-generic elements. Dr. Furniss arbitrarily selects four superficial physical characteristics—a thin build, a diamond-shaped head, stick arms and hands, and a carrot nose—on which to base her entire assertion of substantial similarity between the main characters. Dr. Furniss omits physical details that do not support her opinion, such as the fact that Olaf has feet and the Snowman does not; or that the Snowman has a hat and scarf in common with her "Iconic" snowmen and most others, while

Olaf has only a few sprigs of hair, which is fairly unique. Nor does she mention that Olaf's body falls apart and comes back together again in several different ways, which is a very notable characteristic the Snowman does not share.

Even limiting the analysis just to the characteristics that Dr. Furniss selects, the characters are not substantially similar. Carrot noses and stick arms and hands are generic to snowmen. The characters have very different bodies: the plaintiff's Snowman has a one-piece, oblong body, while Olaf's body has the two round balls common to most snowmen, including the "Iconic" snowmen Dr. Furniss describes on page 8 of her report. The Snowman's diamond-shaped head is oval with eyes and a mouth made out of what appear to be buttons, a common item used in making snowmen. Olaf's face is long, with realistic looking eyes, a mouth with teeth, and cheekbones.

Perhaps most implausible is Dr. Furniss's claim that "neither snowman is named." The snowman in the teaser trailer does have a name, Olaf, but Dr. Furniss argues that her claim is accurate because the viewer would not have *known* his name when the film was first screened. The posting of the *Frozen* teaser trailer on YouTube notes that one of the characters in *Frozen* is "a hilarious snowman named Olaf," however. See <https://www.youtube.com/watch?v=S1x76DoACB8>.

As to the supporting characters, Dr. Furniss fails to analyze or detail the rival animals except to say they are "few in number," "unnamed," and "in competition with the snowman during the majority of the film." These are obviously generic characteristics.

Sequence of Events (Furniss Report at page 24)

I agree with Dr. Furniss that, like most films, both works can be broadly described using a classical three-act structure. I disagree, however, that the *expression* of the three acts are substantially similar in this case. My report describes in detail how filtration analysis should be properly applied to the sequence of events here. Because much of the sequencing of the basic story idea consists of scenes-a-faire—that is, it flows naturally from the generic premise of a snowman and an animal fighting over a nose—such analysis is particularly important with respect to this element.

Dr. Furniss writes that "the sequence of events in both [works] . . . is centered on competition over the snowman's carrot nose." This is an incomplete description. In *The Snowman*, the statement is only true for Acts 1 and 2. By the end of Act 2, the competition is over; the Snowman has beaten the rabbit and gained his nose back. Act 3 is not about a competition for the nose; it is about the rescue of the rabbit. The rabbit doesn't ever beat the Snowman to the nose. The only way to make the sequence of events appear substantially similar is to omit this crucial difference, which affects the structure and tone of the whole work.

Dr. Furniss's macro-outline breaking down the three acts is highly generic: "the snowman loses his nose onto a frozen lake"; the protagonists and antagonists "traverse the ice"; and the snowman "loses his nose" but "gets it back." As I demonstrated in my initial report, generic aspects like the idea of a snowman losing his nose, an obstacle in the form of slippery

ice, and a hungry animal antagonist appearing must be filtered out. When that is done, what remains are two sequences of events that are very different from beat to beat.

Many of Dr. Furniss's specific statements in this section reiterate errors from elsewhere in her report. She again mistakenly argues that in both works the “snowman’s physical state” launches the story conflict, when in fact an *external* event—a bird knocking the Snowman’s nose off—launches the story conflict in the plaintiff’s film.

Other statements here are partially true but misleading. Dr. Furniss is right that Olaf’s sneezing bookends the action in trailer action, but she is wrong to compare it to the bird’s role in *The Snowman*. The bird *appears* again at the end of *The Snowman* but plays no role in the plot; the bird is simply a visual device to start the credits rolling. Olaf sneezing his head off, on the other hand, is a slapstick bookend to the action that makes his allergies a central plot point in both the beginning and end of the short.

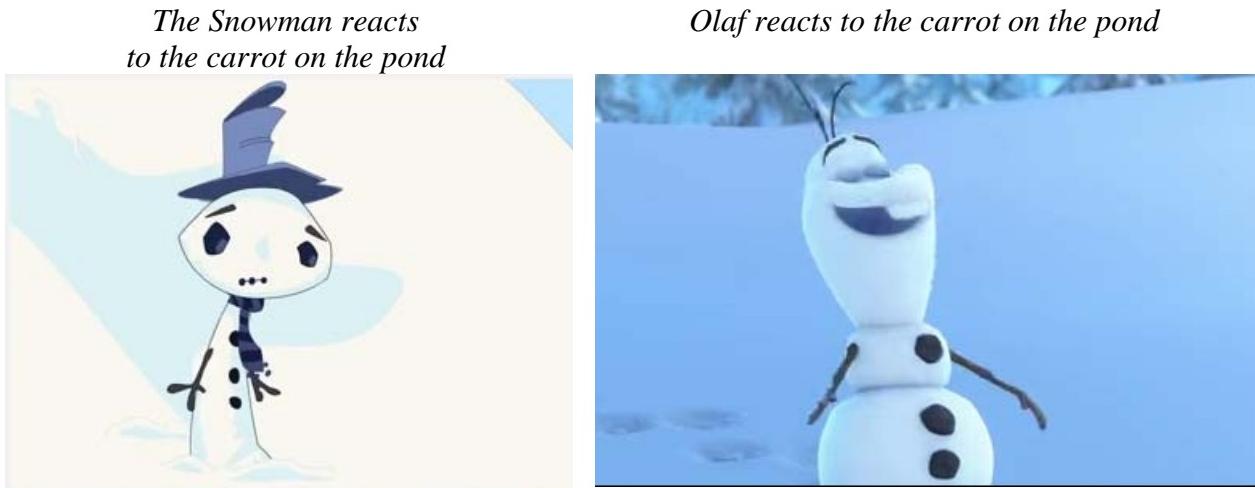
Situations (Furniss Report at pages 26–27)

Dr. Furniss’s discussion of “similarities between the situations” in the films is mostly a reiteration of material from elsewhere in her report. The 10 main bullets in this section all are either irrelevant to the analysis or reflect a failure to filter out unprotectable expression, such as her repeated analysis of the snowmen’s facial expressions.

1. *The snowman already exists when the film begins:* In nearly all films the characters already exist at the beginning of the films. The more meaningful question is how existing characters are introduced. That Olaf walks into the scene and the Snowman is already standing there when the scene begins is a more significant difference than the “similarity” that they both already exist.
2. *The snowman has to retrieve his carrot nose:* This is the basic narrative idea of the two works; it must be filtered out. The concrete expression of this idea is very different in the two works: Olaf sneezes his nose onto the pond, while the Snowman loses his nose after pushing it down a hill after hungry rabbits appear.
3. *The action takes place in one location, a snowy clearing in some woods, where there is a frozen lake:* See my discussion of “Setting” below. A frozen pond and “snowy clearing” are generic elements of stories set in winter, as numerous films about snowmen demonstrate.
4. *The snowman is never in actual peril, but it does experience distress:* The only concrete expression Dr. Furniss uses to illustrate this point is that both snowmen have an “unhappy face” when they realize their noses are in danger and after they think they might have lost them. These are precisely the reactions characters in situations of loss display.
5. *The snowman’s concern about the carrot is demonstrated through the same facial expression at relatively the same point in the action of the film:* Again, sadness about a significant loss is a generic element. As if to further illustrate how generic this point is,

Dr. Furniss notes that the animators in both works convey sadness with “eyebrows downturned” and a “mouth in a downward arc.”

Further, with respect to the particular shots Dr. Furniss uses to illustrate her point, she arbitrarily treats the fact that both snowmen have their faces at “a third-quarter view” as a “similarity” but the fact that one is a medium shot and one is a medium-close shot as irrelevant. Here Dr. Furniss’s analysis again shows the problem with selecting individual frames. Dr. Furniss could just as easily have selected still images from seconds later in the same reactions, in which case the comparison would have looked like this:



The differences in the characters’ reactions illustrate the differences in tone in the works: the Snowman stares at the carrot, sad and defeated; Olaf laughs the problem off, unconcerned and amused. Dr. Furniss’s highly selective culling of just those individual frames that most support her opinions undermines the credibility of her report.

6. *Within the next few seconds after each snowman shows his concern about the carrot, each snowman’s concern about traction problems on the ice is demonstrated through the same expression:* Again, the problem is Dr. Furniss’s misleading selection of frames. In fact, the two snowmen react to the ice differently: Olaf strides confidently onto the ice then stares at it in amused surprise when he realizes he’s not getting anywhere. He never loses his balance. The Snowman, consistent with his timid nature, steps gingerly out onto the ice, slips, and then panics, waving his arms manically.

The Snowman loses his balance and panics*Olaf easily keeps his balance*

The actual expression is completely different in nearly every other frame. Dr. Furniss seems to suggest that the team that created the teaser trailer, up through animation and every other step in creating the work, must have been copying plaintiff's work at the level of individual frames. For Dr. Furniss to reach such an opinion, she would have to have analyzed the production notes and other records of the teaser trailer's production; she did not review any such materials. And, Dr. Furniss would have to account for why so many other individual frames involving similar actions look so different; she does none of this.

7. *The snowman in both Wilson's Short Film and Disney's Teaser Trailer devises a solution to his problems at almost the exact midpoint of the two films:* Dr. Furniss, perhaps inadvertently, actually does describe each work's substantially different expression of the snowman's "solution" to the problem of getting to the carrot nose: the Snowman turns sticks "into skis and poles," while Olaf "disengages his body and ultimately uses only his head to get near the carrot."
8. *The snowman gets control of the carrot but in some manner loses it again, in both cases signaling the start of the Third Act:* As explained above, this statement is factually wrong. Olaf never gains control of the carrot. At the end of Act 2 in the plaintiff's work, the Snowman *has* retrieved his nose already, and then the ice breaks; Act III is about saving the rabbit.
9. *Details about the antagonist animal are revealed at the very end of Wilson's Short Film and Disney's Teaser Trailer:* While it is true in a generic sense that the final moments reveal something about the character of the antagonists, the things they actually reveal—that the rabbit has the capacity for gratitude, on the one hand, and that Sven just wanted to play fetch like a dog, on the other—are substantially different actions/reactions, especially in the context of the particular stories.

Setting (Furniss Report at page 28)

As I stated in my report, snow-covered trees, clearings, hillsides, and frozen ponds are generic components of winter settings, especially in stories involving snowmen.

Editing (Furniss Report at page 28)

The “methods of continuity editing throughout” and “cross-cutting to create suspense and comedy in Act 2” statements are general and abstract techniques. Continuity editing and cross-cutting have been ubiquitous Hollywood techniques throughout the history of filmmaking.

Pace (Furniss Report at page 28)

Dr. Furniss appears to assume that the “pace” of a work is simply a function of whether it is made up of long or short shots. Most shots in films are five seconds or less, however. The question is not how long individual shots are but how quickly the action moves and the plot develops. As I demonstrated in my report, the pace of the plot action in the two works is different because one is a drama with plot complications that modulate its pace, and the other is a slapstick comedy that runs full speed from start to finish.

Framing (Furniss Report at page 28)

Dr. Furniss’s claim that both films use “framing to demonstrate the central theme of the film: the competition for the carrot” is mistaken in several respects. First, the “competition for the carrot” is a *plot premise* in both films, not a “theme.” Second, “framing” is a ubiquitous technique in filmmaking used to direct the viewer’s attention to particular objects. Because the carrot nose plays a central role in both works, framing shots showing the viewer where the carrot went flow naturally from the plot premise.

In fact, Dr. Furniss’s claim that the “framing” in both works is substantially similar seems to consist of nothing more than *one single* shot of the carrot on the ice that is vaguely similar in both works. Even those shots are very different, though: the image from *The Snowman* is an over-the-shoulder shot with the Snowman in the foreground, the carrot nose in the mid-ground, and the rabbits in the background; the image from the teaser trailer has the carrot in the foreground and Sven in the background.

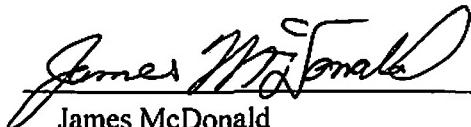
Finally, the shots do not even occur at the same point in the sequence of events or plot action or play the same narrative role. The shot in *The Snowman* comes after the rabbits have slid past the carrot to the other side; its purpose is to establish that the characters are now facing off across the ice from each other. The shot in the teaser trailer comes immediately after Olaf sneezes his nose onto the ice; its purpose is to establish that Sven has noticed the carrot and taken an interest in it.

CONCLUSION

For the foregoing reasons and the reasons stated in my original report, I disagree with the opinions of plaintiff’s expert regarding the works at issue. When the works are analyzed under the standards that I understand apply at the “extrinsic” stage, it is clear that there is no substantial similarity between the two works at the level of protectable expression.

Respectfully submitted,

Dated February 17, 2015



James McDonald